

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3887 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANOHARSINHJI P JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR. KAMAL TRIVEDI WITH MR. HAROOBHAI MEHTA, SR.

ADVOCATE for Petitioner

MR. P.G. DESAI, GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/10/1999

ORAL JUDGEMENT

The petitioner has made two prayers in this writ petition. The first is for quashing the order dated 2.5.1995 passed by the Deputy Secretary, Revenue under U.L.C. Department contained in annexure-A and the second prayer is for setting aside the order dated 3.4.1995 passed by the Deputy Secretary aforesaid directing maintenance of status quo as contained in annexure-D to

this petition.

The learned counsel for the petitioner and the learned Government Pleader have been heard. The factual controversy need not be discussed in this petition because now the scope of enquiry is very much limited.

The writ petition arose on account of order passed by the authority under the Urban Land Ceiling Act. Urban Land Ceiling Act, 1976 was repealed through Act No. 15 of 1999. The repeal Act was adopted by the State of Gujarat with effect from 30.3.1999. The effects of repeal, saving and abatement are contained in Sections 2, 3 and 4 of the Repeal Act. Section 2 provides for repeal of Urban Land Ceiling Act 1976. Section 3 deals with certain savings which are saved from the clutches of the Repeal Act. Section 4 provides for abatement of certain proceedings which were pending immediately before the commencement of the Repeal Act before any court, authority or Tribunal. This writ petition was certainly pending before this court when the Repeal Act came into operation. The learned Government Pleader today files communication indicating that the State Government was unable to take possession of the surplus land before the commencement of the Repeal Act. The communication as requested by the Government Pleader, can be kept on record. In view of this communication in the first place the writ petition which is a proceeding pending before this court abates and in any event this writ petition has become infructuous because possession of the land could not be taken by the State Government. The writ petition has therefore to be dismissed as infructuous or else as abated.

At this stage learned Government Pleader has requested that suitable orders be passed regarding utilisation of amount of Rs. 50 lakhs which was deposited by the petitioner in pursuance of the interim order and modified interim order passed by this court. The learned counsel for the petitioner has no objection if such directions are given. He has however contended that once the petition is dismissed as abated or as infructuous, the interim orders automatically stand vacated and no specific order is needed. However, keeping in view the facts and circumstances of the case and the background in which the interim orders were passed and modified, directions are required to be given for utilisation of amount of Rs. 50 lakhs deposited by the petitioner.

The first order of this court in Special Civil

Application No. 3887 of 1995 is dated 29.6.1995. The relevant interim order is dated 27.9.1995, a copy of which is found on the record on Civil Application No. 593 of 1998. Under this order the petitioner was directed to deposit Rs. 50 lakhs with nationalised bank. It appears from this order that a sum of Rs. 20 lakhs was deposited by the petitioner in Rajkot Commercial Co-op. Bank and another sum of Rs. 3,72,125/- was deposited in Citizen Co-op. Bank Limited. The second deposit of Rs. 3,72,125/- was to mature for payment on 22.10.1995. This court gave direction to the petitioner on these facts to deposit Rs. 27 lakhs in any nationalised bank within two weeks from the date of the order and fixed deposit receipts of the amount of Rs. 27 lakhs were ordered to be deposited with the Registrar of this court within 15 days from placing the amount in fixed deposit. Compliance of this order was made by the petitioner. Fixed deposit receipts were deposited by him with the Registrar of this court.

Thereafter it appears from the Civil Application No. 593 of 1998 that the petitioner required loan in connection with treatment of his wife and he had applied for modification of the interim order passed by this court on 27.9.1995. On 29.1.1998 the said interim order was modified by this court in Civil Application No. 593 of 1998 with observation that the petitioner would be entitled to apply for loan from nationalised bank with which amount of Rs. 50 lakhs is lying in fixed deposit. It was further directed that the nationalised bank will be at liberty to grant loan as per their rules. The Registrar of this court was directed to send fixed deposit receipts to the nationalised bank so that the applicant can make necessary application for loan to the nationalised bank.

It is informed by the learned counsel for the petitioner that thereafter the Registrar of this court had remitted the fixed deposit receipts to the nationalised bank. Thereafter, loan was obtained by the petitioner.

The Government Pleader points out that Rs. 50 lakhs were ordered to be deposited in this court under the interim order with specific purpose that the amount will be utilised for payment of government dues outstanding at the credit of the petitioner and in case this amount is directed to be paid to the petitioner he may be further directed to file an undertaking that he shall utilise the amount firstly towards payment of government dues and if any surplus is left, it may be

utilised by the petitioner. In view of this, the writ petition is dismissed as infructuous with no order as to costs. The amount of Rs. 50 lakhs deposited by the petitioner in nationalised bank which is informed to be Dena Bank, Rajkot, shall be paid with interest to the petitioner on furnishing undertaking before the Registrar of this court within a period of two weeks from today that out of the amounts so received by him from nationalised bank, namely, Dena Bank, Rs. 50 lacs shall be firstly utilised for payment towards Government dues and surplus if any left will be utilised by the petitioner for other purpose including repayment of loan with interest to Dena Bank. This direction shall be subject to the repayment of loan taken by the petitioner from Dena Bank as a second charge. Copy of this order should be sent to the Registrar for information and necessary action.

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